

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Petters Company, Inc., et al.,

Debtors.

(includes:

Petters Group Worldwide, LLC;

PC Funding, LLC;

Thousand Lakes, LLC;

SPF Funding, LLC;

PL Ltd., Inc.;

Edge One LLC;

MGC Finance, Inc.;

PAC Funding, LLC;

Palm Beach Finance Holdings, Inc.)

**Jointly Administered under**

**Case No. 08-45257**

Court File No. 08-45257

Court Files Nos:

08-45258 (GFK)

08-45326 (GFK)

08-45327 (GFK)

08-45328 (GFK)

08-45329 (GFK)

08-45330 (GFK)

08-45331 (GFK)

08-45371 (GFK)

08-45392 (GFK)

Chapter 11 Cases

Judge Gregory F. Kishel

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**TRUSTEE JOHN R. STOEBCNER'S MEMORANDUM IN RESPONSE TO  
OPPORTUNITY FINANCE'S MEMORANDUM IN OPPOSITION TO TRUSTEE  
DOUGLAS A. KELLEY'S MOTION FOR AN ORDER AUTHORIZING AND  
APPROVING CASE MANAGEMENT PROCEDURES**

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John R. Stoebner (the "Polaroid Trustee"), Chapter 7 Bankruptcy Trustee of PBE Corporation, formerly known as Polaroid Corporation, and its affiliated debtors (the cases are jointly administered under Case No. 08-46617 and collectively referred to herein as the "Polaroid Cases"), had not planned to file any memorandum concerning the motion of trustee Douglas A. Kelley (the "PCI Trustee") in the above-referenced cases (collectively referred to herein as the "PCI Cases") for an order authorizing and approving case management procedures in the PCI Cases. In their Memorandum, however, Opportunity Finance, LLC, and its related defendants (collectively, "Opportunity Finance") have taken positions concerning case management

procedures not only in the PCI Cases, but also in the Polaroid Cases. So that the Court does not believe that Opportunity Finance's position concerning the Polaroid Cases is unchallenged and hence should be incorporated into the Court's case management procedures in the PCI Cases, the Polaroid Trustee respectfully submits this short Memorandum.

Opportunity Finance repeatedly suggests that the PCI Cases and the Polaroid Cases should have the same schedule concerning the separate adversary proceedings against Opportunity Finance in the two cases. For example, Opportunity Finance asserts, "It makes no sense for [Opportunity Finance] and the respective trustees to be briefing and arguing identical legal issues on a separate schedule in the two proceedings." Opportunity Finance Memorandum at 10; *see also id.* at 4). The Polaroid Trustee emphatically disagrees.

**First**, putting the Opportunity Finance litigation in the Polaroid Cases on the same track as the Opportunity Finance litigation in the PCI Cases would severely prejudice the Polaroid Trustee and the real plaintiffs in interest, the Polaroid creditors. Opportunity Finance and the PCI Trustee have been in settlement discussions in the PCI Cases for at least one year. As part of those discussions, Opportunity Finance has produced its documents to the PCI Trustee under a Confidentiality Agreement and has allowed the PCI Trustee's forensic accounting firm, PriceWaterhouseCoopers, to review and analyze those documents. By comparison, the Polaroid Trustee's adversary proceeding against Opportunity Finance is new. There have been no discussions between the parties. Even more important for purposes of Opportunity Finance's attempt to rush the Polaroid litigation, Opportunity Finance has expressly refused to allow the PCI Trustee to share Opportunity Finance's documents and the accountants' analysis with the Polaroid Trustee. As a result, the Polaroid Trustee is at least one year behind Opportunity Finance and the PCI Trustee in the investigation of the facts surrounding the transactions at

issue. Whether or not Opportunity Finance is intentionally trying to put the Polaroid litigation on a schedule that would deprive the Polaroid Trustee of a fair chance to investigate and conduct discovery, such would be the result of Opportunity Finance's proposal.<sup>1</sup>

**Second**, not only would the Polaroid Trustee be prejudiced if the two adversary proceedings were put on the same schedule, but also, there would not be any benefit to the litigation process. The two claims involve different transactions and parties, so there would be little if any reason to consolidate discovery. Opportunity Finance acknowledges as much:

We presume that the facts and circumstances of the numerous defendants' transfers of funds to and from Petters-related businesses will vary greatly (and indeed the complaints in the adversary proceedings reflect many such differences). The Opportunity Finance Defendants and the Individual Defendants do not see any "common issues of fact" that would be appropriate for consolidated resolution at this early stage of the proceedings.

Opportunity Finance Memorandum at 10-11.

Indeed, Opportunity Finance argues for placing the two proceedings on the same schedule not for purposes of discovery, but for purposes of placing "briefing and arguing identical legal issues" on the same track. *Id.* at 10. The Polaroid Trustee respectfully submits that the controverted legal issues in the two adversary proceedings are unlikely to be identical. For example, Opportunity Finance asserts that there is a threshold statute-of-limitations issue in the PCI Case (*see* Opportunity Finance Memorandum, at 11), but there is no such issue in the Polaroid Case. Even if Opportunity Finance were correct that the legal issues are truly identical,

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<sup>1</sup> Of course, the Court could eliminate this prejudice by significantly slowing down the deadlines in the PCI adversary proceeding to give Polaroid a fair chance to catch up on its one-year disadvantage. Although Opportunity Finance states that it "believe[s] the PCI Trustee agrees with us on this issue [of placing the Polaroid and the PCI adversary proceedings on the same schedule]" (Opportunity Finance Memorandum at 10), it is the Polaroid Trustee's understanding that the PCI Trustee does not want the schedule in the PCI adversary proceeding slowed down, and that the PCI Trustee sees no benefit to placing the two proceedings on the same schedule.

however, it would be a small burden for Opportunity Finance to merely change the caption on its motion papers, and for the Court to change the caption on its Orders.

**Finally**, Opportunity Finance argues that the schedules for the Polaroid Trustee's and the PCI Trustee's adversary proceedings against Opportunity Finance should be the same because "the Polaroid Trustee seeks to recover, *inter alia*, one of the same transfers that the Trustee here [in the PCI Case] also seeks to recover." Opportunity Finance Memorandum, at 3. The transfer to which Opportunity Finance refers was approximately \$4 million. By contrast, the total amount at issue in the Polaroid Trustee's adversary proceeding against Opportunity Finance is approximately \$255 million. Undoubtedly, the parties will work together to determine the proper party plaintiff concerning the \$4 million transfer. It would make no sense for the transient overlap of one \$4 million transfer to determine the scheduling fate of the other \$251 million at issue, especially when tying the Polaroid adversary proceeding to the PCI adversary proceeding would severely prejudice the Polaroid creditors without any corresponding benefit to the litigation process.

### **Conclusion**

The PCI adversary proceeding against Opportunity Finance should be put on a track that makes sense for it – independent of the Polaroid adversary proceeding. In turn, the scheduling for the Polaroid adversary proceeding against Opportunity Finance should be, and will be, dealt with in the Polaroid Cases in the upcoming February hearing on the Polaroid case management motion.

Respectfully submitted,

Dated: January 16, 2011

LAPP, LIBRA, THOMSON,  
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**UNSWORN CERTIFICATE OF SERVICE**

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I, Janet L. Pipp, declare under penalty of perjury that on January 16, 2011, I served a copy of the following document:

**TRUSTEE JOHN R. STOEBCNER'S MEMORANDUM IN RESPONSE TO  
OPPORTUNITY FINANCE'S MEMORANDUM IN OPPOSITION TO TRUSTEE  
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Executed on: January 16, 2011

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